

Attorney Docket No. 21311-0001
Application No. 10/668,471

D.) AMENDMENTS TO THE DRAWINGS

None.

E.) REMARKS/ARGUMENTS

This response is filed in response to the Office Action dated November 3, 2004.

Upon entry of this Response, claims 1-20 will be pending in the Application.

In the outstanding Office Action, the Examiner rejected claims 1, 2, 4, 5, and 20 under 35 U.S.C. 102(b) as being anticipated by Long (U.S. Patent No. 5,846,119); rejected claims 3 and 18 under 35 U.S.C. 103(a) as being unpatentable over Long in view of Kaelin (U.S. Patent No. 6,669,528 B2); rejected claims 6-17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Long in view of Richardson (U.S. Patent No. 5,830,036); and objected to the specification.

Applicant thanks the Examiner for the various telephone conferences conducted with Applicant's representative over the past two months.

Rejection under 35 U.S.C. 102

The Examiner rejected claims 1, 2, 4, 5, and 20 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,846,119 to Long, hereinafter referred to as "Long".

Specifically, the Examiner stated that:

Long discloses a wild game call comprising: a box (20) having a base (22) attached to substantially vertical sidewalls (32, 34, 36), the sidewalls forming an opening (see fig. 1); a striking plate (44) comprising at least one friction material (see column 3, lines 42-45) and having a main body (24) operatively connected to the box to form a top of the box (see fig. 1), the at least one friction material being disposed on a top striking surface of the striking plate (see fig. 1), the top striking surface being configured to be used with a striker (see figs. 1, 3a-4b), the main body being substantially coextensive with the sidewalls (see figs. 1, 3a-4b), and comprising a protruding portion (defined by the top portion of 24) being disposed adjacent to the opening and being configured to extend over and beyond the opening

(see figs. 1, 3a-4b); wherein the protruding portion comprises a bottom surface (42) and wherein the bottom surface of the protruding portion is a bottom striking surface (see fig. 3b, and column 3, lines 57-65); wherein a thickest portion of the striking plate is adjacent a sidewall opening (see figs. 3b, 4b); wherein a thickness of the protruding portion of the striking plate narrows gradually to form a thin unsecured end (see figs. 1, 2, the top protruding portion of 24 narrows gradually to form a thin unsecured end).

Applicant respectfully traverses the rejection of claims 1, 2, 4, 5, and 20 under 35 U.S.C. 102(b).

Long, as understood, is directed to a wooden box call that pivotably carries a strike plate on the back face of the lid/actuator. The strike plate allows use with convention pegs or reeds, which are scraped against the strike plate to produce a mimic turkey call. Also, the reed or peg can be partly threaded and thus screwed into a socket in the bottom of the box call.

A. Claims 1, 2, 4, and 5

In contrast to Long, independent claim 1, as amended, recites a wild game call comprising a box having a base attached to substantially vertical sidewalls, the sidewalls forming an opening and a striking plate. The striking plate comprises at least one friction material and has a main body permanently attached to at least two sidewalls to form a top of the box. The at least one friction material is disposed on a top striking surface of the striking plate. The top striking surface is configured to be used with a striker. The main body is substantially coextensive with the sidewalls and comprises a protruding portion that is disposed adjacent to the opening and is configured to extend over and beyond the opening. Support for the amendments to claim 1 may be found in the specification and Applicant submits that no new matter has been added as a result of these amendments.

The following principles apply to Section 102 rejections. The Manual of Patent

Attorney Docket No. 21311-0001
Application No. 10/668,471

Examining Procedure ("MPEP") §2131 provides: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the ... claim. The elements must be arranged as required by the claim..." [citations omitted] This is in accord with the decisions of the courts. Anticipation under section 102 requires "the presence in a single prior art disclosure of all elements of a claimed invention arranged as in that claim." Carella v. Starlight Archery, 231 USPQ 644, 646 (Fed. Cir., 1986), quoting Panduit Corporation v. Dennison Manufacturing Corp., 227 USPQ 337, 350 (Fed. Cir., 1985).

Thus, identifying a single element of the claim, which is not disclosed in the reference, is sufficient to overcome a Section 102 rejection.

At least one of the features recited by Applicant in independent claim 1 is not taught or suggested by Long. Long does not teach or suggest "a main body permanently attached to at least two sidewalls." Rather, Long teaches that:

[t]he lid 24 is fastened to the end piece 36 by a small hinge 46 which pivots on a screw 48 with a compressed coil spring 52 between the end piece 36 and hinge 46. The screw 48 is anchored into the end piece 36 and located either centered between the sidewalls as shown, or, alternately, off center (not shown). Given the foregoing, the lid 24 can pivot via the hinge 46 as shown by FIG. 1, or be flipped to spin about the screw 48 as shown by FIG. 2, so that, as a result, the lid 24 can be turned or 'flipped' over for orienting one side or the other alternatively to the sidewall edge 38, or to the pegs 40, without detaching the lid 24 to do so (col. 3, lines 45-56).

Long also teaches that the call may be operated "via strokes or scrapes of the conventional convex face 42 of the lid 24 against the conventional convex sidewall edge 38, to produce sounds preferably simulative of turkey noises" (col 3, lines 58-61). Long clearly teaches a main body permanently attached to only one sidewall. If Long were to have more than one sidewall permanently attached to the main body, Long

Attorney Docket No. 21311-0001
Application No. 10/668,471

would be unable to function as set forth in its very teachings, as it could not be operated via strokes or scrapes of the conventional convex face 42 of the lid 24 against the conventional convex sidewall edge 38. Thus, since Long does not teach or suggest all of the limitations recited in independent claim 1, Applicant respectfully submits that Long does not anticipate Applicant's invention as recited in independent claim 1 and claim 1 is therefore allowable.

Dependent claims 2, 4, and 5 are believed to be allowable as depending from what is believed to be allowable independent claim 1 for the reasons given above. In addition, claims 2, 4, and 5 recite further limitations that distinguish over the applied art. In conclusion, it is respectfully submitted that claims 2, 4, and 5 are neither anticipated nor rendered obvious by Long and are therefore allowable.

B. Claim 20

In contrast to Long, independent claim 20, as amended, recites a wild game call comprising a box, the box comprising a base attached to substantially vertical sidewalls, the sidewalls forming an opening. The box further comprises a striking plate comprising a main body and a protruding portion. The main body is substantially coextensive with the sidewalls and has a top striking surface on a top exterior surface of the box comprising at least one friction material. The main body is permanently attached to at least two sidewalls. The top exterior surface is configured to be used with a striker. The protruding portion is disposed adjacent to the opening and being configured to extend over and beyond the opening.

The above discussion of Long is equally applicable here. Long clearly teaches a main body permanently attached to only one sidewall. If Long were to have more than one sidewall permanently attached to the main body, Long would be unable to function as set forth in its very teachings, as it could not be operated via strokes or scrapes of the conventional convex face 42 of the lid 24 against the conventional

Attorney Docket No. 21311-0001
Application No. 10/668,471

convex sidewall edge 38. Thus, since Long does not teach or suggest all of the limitations recited in independent claim 20, Applicant respectfully submits that Long does not anticipate Applicant's invention as recited in independent claim 20.

Therefore, for the reasons given above, independent claim 20 is believed to be distinguishable from Long and, therefore, is not anticipated, nor rendered obvious by Long and claim 20 is therefore allowable.

Rejections under 35 U.S.C. 103

A. Claims 3 and 18

The Examiner rejected claims 3 and 18 under 35 U.S.C. 103(a) as being unpatentable over Long in view of U.S. Patent No. 6,669,528 B2 to Kaelin, hereinafter referred to as "Kaelin".

Specifically, the Examiner stated that:

Long discloses the claimed invention except for the thickness of the striking plate varying over a length of the plate, and a sidewall comprising an aperture. However, Kaelin teaches a box game call with the thickness of the striking plate (2) varying over a length of the plate (see fig. 2, the thickness of plate 2 gradually becomes thinner toward the end of the plate 2 that is adjacent to the sidewall 13), and a sidewall (14) comprising an aperture (19). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the box game call of Long, in view of Kaelin, such that it would provide the box game call of Long with the thickness of the striking plate varying over a length of the plate, and a sidewall comprising an aperture for the purpose of varying the pitch and the tone of the sound produced by the box game call.

Attorney Docket No. 21311-0001
Application No. 10/668,471

Applicant respectfully traverses the rejection of claims 3 and 18 under 35 U.S.C. 103(a).

The description of Long is set forth in a previous section and will not be repeated here.

Kaelin, as understood, is directed to directed to a single hand actuated friction type box call that consists of three principal components, a generally rectangular wooden box, a longitudinally double convex bottom striker lid and a return mechanism. A generally rectangular, elongated hollow wooden sound chamber box is adjacent the assembly of a horizontal base, a front and back wall and a pair of opposed end blocks place one at each end of the base and between each sidewall. A handle-less double convex bottom striker lid, with a thumb slide tab attached to its top side, is hinged to one end block of the sound box to provide an axis point for movement of the striker lid. The return mechanism serves a dual purpose of holding the striker lid in an open position and holding the striker lid against the top of the elongated, convex-topped back wall. A looped stretchable band may be connected through the eyelet then threaded through the drilled hole in the back wall and then wrapped around the end of the sound chamber end block. The band is then held in place in one of the three variable tension connectors that may be notched into the side of the base on the opposite end from the pivot screw and on the opposite side from the hole drilled in the side back wall. The call can be actuated by holding the call on its side in the palm of the hand and resting the thumb on the top of the striker lid and against the slide thumb tab then squeezing the lid shut. The call is then actuated by moving the thumb. The tension from the looped, stretchable band returns the lid to the open position plus it sets the correct tension between the striker lids against the sound chamber box wall. There is no protruding handle extending out past the body of the call.

Attorney Docket No. 21311-0001
Application No. 10/668,471

Claims 3 and 18 are both directed toward a wild game call comprising, in part, a main body permanently attached to at least two sidewalls.

The following principle of law applies to all Section 103 rejections. MPEP 2143.03 provides “To establish prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).” [emphasis added] That is, to have any expectation of rejecting the claims over a single reference or a combination of references, each limitation must be taught somewhere in the applied prior art. If limitations are not found in any of the applied prior art, the rejection cannot stand. In this case, the applied prior art references clearly do not arguably teach some limitations of the claims.

As set forth in the previous section, Long clearly teaches a main body attached to only one sidewall. If Long were to have more than one sidewall permanently attached to the main body, Long would be unable to function as set forth in its teachings, as it could not be operated via strokes or scrapes of the conventional convex face 42 of the lid 24 against the conventional convex sidewall edge 38. Long does not contain the limitation of a main body permanently attached to at least two sidewalls and, in fact, teaches away from the present invention. Therefore, Long cannot properly be used in combination with Kaelin or any other reference or combinations of references.

Kaelin clearly teaches a main body (striker assembly) permanently attached to only one sidewall of a sound chamber box. As Kaelin is a single hand actuated friction type box call, Kaelin would be unable to function if it had more than one sidewall permanently attached to the striker assembly. Kaelin does not contain the limitation of

a main body permanently attached to at least two sidewalls, and, in fact, teaches away from the present invention. Therefore, Kaelin cannot properly be used in combination with Long or any other reference or combinations of references.

Therefore, for the reasons given above, dependents claims 3 and 18 are believed to be distinguishable from Long in view of Kaelin, therefore, are not rendered obvious by Long in view of Kaelin and are therefore allowable. In addition, dependent claims 3 and 18 are believed to be allowable as depending from what is believed to be allowable independent claim 1 for the reasons given above.

B. Claims 6-17 and 19

The Examiner rejected claims 6-17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Long in view of U.S. Patent No. 5,830,036 to Richardson, hereinafter referred to as "Richardson".

Specifically, the Examiner stated that:

Long discloses the claimed invention except for the striking plate comprising a plurality of friction materials on at least a portion or the entire top or bottom striking surface, the striking plate is comprised of at least one hollow or semi-hollow structure which extends along at least a portion of the striking plate, the at least one structure comprises at least one groove/channel in a bottom surface of the striking plate with a shape selected from the group consisting of: rectangular, v-shaped, and rounded, the at least one channel is entirely enclosed within the striking plate and is comprised of at least one open end, a material selected from the group consisting of galvanized steel, sand, weather resistant thermoplastic, and combinations thereof is embedded in the striking plate.

However, Richardson teaches a box game call with the striking plate (10) comprising a plurality of friction materials on at least a portion or the entire top or bottom striking surface (see column 8, lines 42-52), the striking plate is comprised of at least one hollow or semi-hollow structure (see figs. 4, 6, striking plate 10 is semi-hollow) which extends along at least a portion of a length of the striking plate (See figs. 6-9), the at least one structure comprises at least one

groove/channel (18) in a bottom surface of the striking plate with a shape selected from the group consisting of: rectangular, v-shaped, and rounded (see fig. 6, the channel 18 is rounded), the at least one channel is entirely enclosed within the striking plate (see figs. 2, 5, 13) and is comprised of at least one open end (see fig. 6, defined by reference numeral 28c), a material selected from the group consisting of galvanized steel, sand, weather resistant thermoplastic, and combinations thereof is embedded in the striking plate (see column 8, lines 42-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the box game call of Long, in view of Richardson, such that it would provided the box game call of Long with the aforementioned limitations for the purpose of enhancing the quality of pitch and tone of the sound produced by the box game call.

Applicant respectfully traverses the rejection of claims 6-17, and 19 under 35 U.S.C. 103(a).

The description of Long is set forth in a previous section and will not be repeated here.

Richardson, as understood, is directed to a chambered striker wildlife call assembly for generating wildlife sounds. The Richardson call assembly is provided with a striker member subassembly having first and second end-portions and top and bottom sections affixed to and adjoining one another. The first end portion and the bottom section of the striker subassembly are provided with a sound chamber channel which is covered by the attached and adjoining top section of the striker subassembly. The first end-portion of the striker subassembly is provided with an elongate pivot hinge channel. Additionally, the striker subassembly is provided with an upper hinge support member having a channel generally congruent to that of the elongate pivot hinge channel of the striker. The call assembly of Richardson is designed to work in combination with a lower box subassembly, which can be any of a number of available box-type turkey or wildlife lower box assemblies, having an open sound chamber with a first pair of opposing side walls and a second pair of

Attorney Docket No. 21311-0001
Application No. 10/668,471

opposing side walls, with each of the second pair of opposing side wall having an upper widthwise surface having a range of points of accessible contact and a middle portion-oriented strike point where a mid-range of preferred sound is produced upon friction-type contact. Additionally, the first end of the lower box subassembly is provided with a hinge coupling space for receipt and installation, allowing pivotal and slideable movement, of the striker subassembly. The call assembly is further provided with a coupling hinge means subassembly for pivotably and slideably attaching the striker subassembly to the lower box subassembly. This coupling hinge means subassembly extends through and retains the channel of the upper hinge support member of the striker, the elongate pivot hinge channel of the striker and the hinge coupling space of the lower box subassembly so that the bottom section of the striker can make optionable, friction-like and releasable contact with either of the second pair of opposing side walls of the lower box subassembly at a variable location along the range of points of accessible contact and the strike point on the upper widthwise surface of either of the second pair of opposing side walls of the lower box subassembly to generate a variable range of wildlife sounds.

Claims 6-17, and 19 are all directed toward a wild game call comprising, in part, a main body permanently attached to at least two sidewalls.

As set forth in the previous section, Long clearly teaches a main body attached to only one sidewall and teaches away from the present invention. Therefore, Long cannot properly be used in combination with Richardson or any other reference or combinations of references.

Richardson clearly teaches the use of a lower box sub-assembly 90 attached to a striker subassembly 72 using coupling hinge means assembly 90 (col. 10, lines 21-29). The striker subassembly attachment is achieved via a hinge coupling cylinder-like

Attorney Docket No. 21311-0001
Application No. 10/668,471

space 91 in one of the sidewalls (col. 10, lines 30-35). As Richardson is a friction type box call (col. 7, lines 32-35), Richardson would be unable to function if it had more than one sidewall permanently attached to the striker sub-assembly. Richardson does not contain the limitation of a main body permanently attached to at least two sidewalls, and, in fact, teaches away from the present invention. Therefore, Richardson cannot properly be used in combination with Long or any other reference or combinations of references.

Therefore, for the reasons given above, dependent claims 6-17, and 19 are believed to be distinguishable from Long in view of Richardson, and therefore, are not rendered obvious by Long in view of Richardson and are therefore allowable. In addition, dependent claims 6-17, and 19 are believed to be allowable as depending from what is believed to be allowable independent claim 1 for the reasons given above.

Objection to the Specification

The Examiner objected to paragraph [0042] of the specification because of informalities. In response Applicant has amended paragraph [0042]. Applicant submits that no new matter has been added as a result of the amendments to paragraph [0042].

The Examiner objected to paragraph [0044] of the specification because of informalities. In response, Applicant has amended paragraph [0044]. Applicant submits that no new matter has been added as a result of the amendments to paragraph [0044].

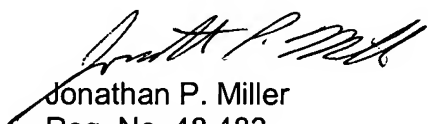
Attorney Docket No. 21311-0001
Application No. 10/668,471

CONCLUSION

In view of the above, Applicant respectfully requests withdrawal of the outstanding rejections. As a result of the amendments and remarks presented herein, Applicant respectfully submits that claims 1-20 are neither anticipated nor rendered obvious by Long, Kaelin, and/or Richardson and thus are in condition for allowance. As the claims are neither anticipated nor rendered obvious in view of the applied art, Applicant requests allowance of claims 1-20 in a timely manner. Applicant submits that no new matter has been added by the amendments to the claims or by the addition of new claims. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,
MCNEES WALLACE & NURICK LLC



Dated: March 18, 2005

Jonathan P. Miller
Reg. No. 48,483
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Attorney for Applicant
Tel: (717) 237-5358
Fax: (717) 237-5300